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Applicant(s) Douglas B. Wilson
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Title FATIGUE RELIEVING SUPPORT FOR STEERING
WHEELS AND THE LIKE
Examiner Vinh Luong
Unit 3682

CERTIFICATE UNDER 37 C.F.R. § 1.10

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SIR:

This is a Reply Brief pursuant to 37 C.R.F. § 41.41 in response to the Examiner's Answer dated September 13, 2006.

I. General

This paper is in reply to the Examiner's Answer dated September 13, 2006. In that Answer, the Examiner stated his basis to support his indefiniteness, anticipation, obviousness-type double patenting rejections of the claims on appeal, claims 14-19, 24/14, and 27. Claims 14-19, 24/14, and 27 were rejected for indefiniteness under 35

U.S.C. §112, second; claims 14-17, 19/17, 24/14, and 27 were rejected for anticipation under 35 U.S.C. §102 in light of U.S. Patent No. 2,118,540 to Van Arsdell (“Van Arsdell”) or U.S. Patent No. 2,134,020 to Anson (“Anson”); and claims 14, 18, and 19/18 were rejected for anticipation under 35 U.S.C. §102 in light of U.S. Patent No. 1,575,848 to Laubach (“Laubach”). Finally, the Examiner has provisionally rejected claims 14-19, 24/14, and 27 under the judicially-created doctrine of obviousness-type double patenting over claims 20-28 of co-pending parent application U.S. Patent Application Ser. No. 10/720,821, filed November 24, 2003 also on appeal. The obviousness-type double patent rejection is not being appealed. However, if the Board reverses the Examiner in this Appeal and the Appeal with regard to U.S. Patent Application Ser. No. 10/720,821, Appellant will file a terminal disclaimer to overcome any obviousness-type double patenting rejection.

The legal and factual bases relied on by the Examiner in the Examiner’s Answer as support for his indefiniteness and anticipation rejections are misplaced. More specifically, the case law cited by the Examiner to support the indefiniteness rejection actually supports Appellant making it appropriate to make the dictionary definitions filed by Appellant during prosecution on the merits of record to show what the ordinary meaning of the terms rigid, semi-rigid, flexible, and non-deformable would be. Further, the factual explanations the Examiner advances in the Examiner’s Answer to make out the prima facie bases for anticipation actually support Appellant’s position that claims 14-19, 24/14, and 27 are patentable over Van Arsdell, Anson, and Laubach.

II. The Phillips Case Supports Appellant

In the Examiner’s Answer, the Examiner has relied primary on *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) to support his position that the dictionary definitions that have been made of record by Appellant to show the ordinary meaning of common terms in the English language should not be made of record. Appellant submits that *Phillips* supports Appellant to include them.

In support of the indefiniteness rejection, the Examiner stated the following with regard to Appellant providing dictionary definitions of common English language words to show their meaning:

Regarding Appellant's reliance on extrinsic evidence, such as, *Ninth New Collegiate Dictionary*..., the Examiner respectfully submits that the specification is the single best guide to the meaning of a claim term. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 [75 USPQ2d 1321](Fed. Cir. 2005)(en banc). See also, e.g., the meaning of the term "adjustable" in *Curtiss-Wright Flow Control Corp. v. Velan Inc.*, 77 USPQ2d 1988 (Fed. Cir. 2006). Since Appellant's specification does not provide guidance as to what type of material(s) is (are) considered to be "rigid, semi-rigid, or flexible, or non-deformable." Thus, Appellant's claims as *unclear and/or ambiguous*. [Emphasis in original] Examiner's Answer, p. 5.

First, Appellant would like to point out that the Examiner's description of the indefiniteness rejection has changed from what was stated in the Office Action dated March 30, 2006, the final rejection of the claims for indefiniteness. In the March 30th Office Action, the Examiner stated (Attachment A hereto for convenience):¹

The term "rigid," "semi-rigid," "flexible," or "non-deformable" in claims 14 and 27 is a relative term, which renders the claims indefinite. The term "rigid," "semi-rigid," "flexible," or "non-deformable" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For example, it is unclear what range of Rockwell hardness of the material of the second section is required in order to be considered as being "rigid," "semi-rigid," "flexible," or "non-deformable." [Citation omitted.] Office Action dated March 30, 2006, p. 3.

The Examiner sought to rely on his indefiniteness position taken in the March 30th Office Action in the "Advisory Action Before the Filing of an Appeal Brief" dated July 14, 2006 ("Advisory Action") (Attachment B hereto for convenience).² In the Advisory Action, the Examiner stated:

Continuation of 11. See the reasons set forth in the Final Office [A]ction on March 30, 2006. In addition, with respect to:

(a) Applicant's reliance on extrinsic evidence, such as, Webster's Dictionary, the Examiner respectfully submits that the specification is the single best guide to the meaning of a claim term. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 [75 USPQ2d 1321](Fed. Cir. 2005) (en banc). Moreover, Applicant's arguments are similar to the arguments presented in co-pending Application No. 10720821, the Examiner's Response in the

¹ The March 30, 2006 Office Action is Attachment A to the Evidence Appendix to the Corrected Appeal Brief.

² The Advisory Action is Attachment D to the Evidence Appendix to the Corrected Appeal Brief.

final rejection on May 9, 2006 of Appl. '821 is incorporated here by reference.

Advisory Action, p. 2.

Noting the Examiner's basis for supporting his indefiniteness rejection in the March 30th Office Action, Appellant submits that this is the support the Examiner relied on in finally rejecting the claims and Appellant will direct his comments to this support because Examiner has not stated any withdrawal of it in favor of something new.

As stated, the Examiner has relied principally on *Phillips* to support Appellant's inclusion of the definitions from *Webster's Ninth Edition* should not have any weight in description of the terms "rigid," "semi-rigid," "flexible," or "non-deformable."

Appellant, however, asserts that a reading of *Phillips* does support Appellant's position that these dictionary definitions are appropriate to show what these commonly used terms mean. In the pertinent part, *Phillips* states:

In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. *See Brown v. 3M*, 265 F.3d 1349, 1352 (Fed. Cir. 2001) (holding that the claims did "not require elaborate interpretation"). In such circumstances, general purpose dictionaries may be helpful.

Phillips v. AWH Corp., 415 F.3d at 1314.

Appellant asserts that terms "rigid," "semi-rigid," "flexible," and "non-deformable" are common terms as would be understood by a person of ordinary skill in the art in the context of the application on appeal and if these terms have no special meaning beyond that. As such, it is appropriate to provide the meanings from Webster's to be instructive of their common meaning.

Appellant respectfully requests that the Board reverse and remand the indefiniteness rejection and in remanding instruct the Examiner to reverse and withdraw this rejection.

III. *In re Schreiber* Does Not Support the Examiner's Position

In the related appeal for Application Ser. No. 10/720,821 filed November 24, 2003, the Examiner contended that *In re Schreiber*, 128 F.3d 1473, 1477-48, 44, USPQ2d 1429, 1431-32 (Fed. Cir. 1997) supported his anticipation rejections. Specifically, *Schreiber* was relied on with respect to each of the anticipation rejections based on Van

Arsdel, Anson, and Laubach. In the Examiner's Answer in the present appeal, however, the Examiner only cited *Schreiber* with regard to the anticipation rejection based on Laubach and tangentially with respect to Van Arsdel. Since the claims of the present application were similar enough to those of the related appeal for the Examiner to raise an obviousness-type double patenting rejection against the claims of the present appeal, Appellant believes it appropriate to address *Schreiber* as if the Examiner had raised this case to support the anticipation rejections based on Van Arsdel, Anson, or Laubach.

In the Examiner's Answer in the present appeal, the Examiner stated the following with regard to anticipation rejection based on Laubach:

Appellant contended that the knobs of Laubach are rigidly connected to the steering wheel by the screws 5, thus, the knobs are meant to remain in place in operation. Nevertheless, common sense teaches that the driver can unscrew Laubach's screws 5, and then screw or fasten the screws 5 at other positions on the rim 6 of the steering wheel as the driver so desires. In other words, the position of Laubach's knobs is capable of being changed. As such, Laubach's knobs can inherently perform the functions recited in Appellant's claim. *In re Schreiber*, 128 F.3d 1437[sic], 44 USPQ2d 1429 (Fed. Cir. 1997)

Appellant further asserted that the knob of Laubach does not deform out of interference with the operation of the steering wheel as set forth in claim 14. The Examiner respectfully submits that the driver can unscrew Laubach's screws 5, and then screw or fasten the screws 5 at other positions[s] on the rim 6 of the steering wheel such that the new position is out of interference with the operation of the steering wheel as the driver desires. The operation to adjust or change the position of Laubach's handgrips is similar to the operation to adjust the handgrips of Arsdel since both Laubach and Arsdel use screws as fastening means. Since the position of Laubach's knobs is capable of being changed to be out of interference with the operation of the steering wheeled, therefore, Appellant's claims are anticipated by Laubach. *In re Schreiber*; *Ex parte Masham*; and MPEP 2114, *supra*.

Examiner's Answer, pp. 9-10.

In the above quotation, the Examiner seeks to equate unscrewing a fixed handgrip, drilling a new screw hole at a new location along the rim, and then reattaching the handgrip at the new location to the deforming of the second section as recited in the claims on appeal. Appellant submits this is not supported by the evidence or *Schreiber*.

Appellants submit the facts of *Schreiber* are inapposite to the present application. In *Schreiber*, the portion of the claimed invention at issue and the prior art had the same

shape and the applicant there sought to distinguish the claimed invention from the prior art by stating that the prior art did not perform in the same manner as the claimed invention. To the end, Schreiber (inventor) submitted a declaration stating same. In this regard, *Schreiber* states:

There is no dispute that the structural limitations recited in Schreiber's application are all found in the Harz [prior art] reference upon which the examiner and the Board relied. Thus, to use the terms found in Schreiber's claim 1, Harz discloses a "dispensing top" that has "a generally conical shape and an opening at each end," and "means at the enlarged end of the top to embrace the open end of the container, the taper of the top being uniform." Schreiber argues, however, that Harz does not disclose that such a structure can be used to dispense popcorn from an open-ended popcorn container [rather than oil]. [Emphasis added]

In re Schreiber, 128 F.3d at 1477.

The Federal Circuit in response to this argument by Schreiber stated:

Although Schreiber is correct that Harz does not address the use of the disclosed structure to dispense popcorn, the absence of a disclosure relating to function does not defeat the Board's finding of anticipation. It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable [Citations omitted]. Accordingly, Schreiber's contention that his structure will be used to dispense popcorn does not have any patentable weight if the structure is already known, regardless of whether it has ever been used in any way in connection with popcorn.

In re Schreiber, 128 F.3d at 1477.

Appellant submits that the Examiner is relying on the quotation immediately above to support his rejection; this is improper. In *Schreiber*, a comparison of the prior art and the claimed invention showed that they looked the same and the inventor Schreiber was arguing despite the prior art structure, such prior art would not *function* the same as the claimed invention. Appellant is not making such a contention. What Appellant is asserting and the Examiner fails to recognize is that the claims of the present application positively recite structural and functional features that combined distinguish these claims from the prior art. *Schreiber* addresses this but the Examiner fails to appreciate the Federal Circuit's position on this issue.

Schreiber specifically addresses the issue of functional features and patentability at a location on page 1478 that is not believed cited by the Examiner. This is believed because the Examiner only appears to cite to the bridging language at pages 1477 and

1478. The portion of *Schreiber* germane to the question at issue in the present appeal is on page 1478 where the Federal Circuit raises the issue of functional features being a basis for patentability. At this later location on page 1478, it states:

Schreiber further argues that the functional limitations of his claim distinguish it from Harz. In particular, Schreiber points to the recitation that the claimed top “allows several kernels of popped popcorn to pass through at the same time,” and that the taper of the top is such “as to by itself jam up the popped popcorn before the end of the cone and permit the dispensing of only a few kernels at a shake of a package when the top is mounted on the container.”

In re Schreiber, 128 F.3d at 1478.

What the Examiner fails to appreciate in *Schreiber* is the Federal Circuit’s explicit treatment of functional limitations for providing a basis for patentability. In this regard, the Federal Circuit states:

A patent applicant is free to recite features of an apparatus either structurally or functionally. *See In re Swinehart*, 58 C.C.P.A 1027, 439 F.2d 210, 212, 169 USPQ 226, 228 (CCPA 1971) (“[T]here is nothing intrinsically wrong with [defining something by what it does rather than what it is] in drafting patent claims.”). Yet, choosing to define an element functionally, *i.e.*, by what it does, carries with it a risk. As our predecessor court stated in *Swinehart*, 439 F.2d at 213, 169 USPQ at 28:

where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on. [Citations omitted].

In re Schreiber, 128 F.3d at 1478.

The Examiner’s citation to *Schreiber* is not directed to the Federal Circuit’s pronouncement that patentability may be established through functional limitations when he stated that “claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than functions”[Emphasis added] and cites *Schreiber* as support. As shown above, *Schreiber* does not state this and, in fact, this case states the contrary. Thus, the Examiner has advanced an incorrect interpretation of the case.

When the functional limitations of claims 14-19, 24/14, and 27 were raised as at least one basis for patentability and it was challenged by the Examiner, it became Appellant’s burden to show that the functional limitations were not inherent features to

the prior art being relied on for rejecting the claims for anticipation. *See In re Schreiber*, 128 F.3d at 1478. In response to this challenge, Appellant provided clear basis to show that the apparatus of Van Arsdel, Anson or Laubach did not have a second section that deformed according to the claims on appeal. Appellant has met his burden with respect to each of the references relied on by the Examiner. Appellant, therefore, has shown why the functional limitations were not inherent in any of the three references. This will now be discussed in detail.

1. Van Arsdel Does Not Anticipate Claims 14-17, 19/17. 24/14, and 27

In the Appeal Brief, Appellant pointed out to the Examiner that Van Arsdel differed in at least the following way in discussing the Examiner's alleged position that Van Arsdel supported his contention that it teaches each of the elements of the second section is the following:

The rotation of the steering wheel by hand pressure against the flanges 4 and 5 is assisted by the palm and fingers which are wrapped around the rim of the wheel, and to increase the finger hold of the grip-rest 2, which is thickened and bifurcated to straddle the rim as shown in Fig. 6, is provided with recesses separated by ridges here shown as three in number, 6, 7, and 8....

The weight of the hand and arm are comfortably supported with the bottom of the hand resting in the concavity of the grip-rest as shown in Fig. 1, or with the ball of the thumb seated in the concavity as shown in Fig. 2....

My improved grip-rest may be formed integrally with the rim of the steering wheel as shown in Fig. 8, but I prefer to make it removable as an attachment for any make of car and also to make it adjustable to suit the requirements or fancy of the driver.

Van Arsdel, Page 1, Right Column, Lines 29-54.

The Examiner contends that the grip-rest is deformable; however, Appellant submits this is not supported by Van Arsdel. Van Arsdel requires the following to move the grip-rest: loosen the screw, reposition the grip-rest, and retighten the screw. (Van Arsdel, Page 2, Left Column, Lines 28-32) Appellant submits that this is not deforming according to the claims on appeal during use of the grip-rest, but removal and reattachment of the grip rest, something very different.

Once the grip-rest of Van Arsdel is in place, it is fixed, and does not move. Thus, Van Arsdel is missing at least the deforming element. Moreover, there is nothing in Van

Arsdel that would lead a person of ordinary skill in the art to believe that an inherent feature of the grip-rest was to have a second section that will deform in the manner set forth in the claims on appeal.

Appellant's position on the teachings of Van Arsdel is supported by the reference:

The grip-rest 2 is concave longitudinally and about half of the rest extends over and part way across a steering wheel rim 3 in a manner to slope downwardly and inwardly of the rim. The outer edge 4 of the side, and 5 of the rear end of the concave, located above the rim, extends up into a marginal flange to be contacted by the inside of the ball of the thumb or by the bottom of the hand, depending upon which part of the hand is seated on the rest. These flanges 4 and 5 enable the operator instantly to feel any deviation of the car from a straight course and give him something substantial to push against in resistance and also in rotating the wheel to steer the car around corners and curves and away from obstructions or bad places in the roadway. [Emphasis added]

Van Arsdel, Page 1, Right Column, Lines 13-28.

The quotation above clearly demonstrates that the grip-rest of Van Arsdel does not deform according to the claims on appeal when pressure is applied to it. Noting this, Van Arsdel is missing at least one element, therefore, it cannot establish a prima facie basis of anticipation. Accordingly, this is a basis for the Board to reverse and remand the anticipation rejection based on Van Arsdel with instructions for the Examiner to withdraw this rejection.

2. Anson Does Not Anticipate Claims 14-17, 19/17. 24/14, and 27

In the Appeal Brief, Appellant distinguished Anson and noted the Examiner put tremendous weight on the description of the Attachment (handgrip) in Anson in considering the issue of anticipation:

I [Anson] have found that in the driving of an automobile and particularly when driving for extended periods of time over long distances, the normal manner of holding and manipulating the steering wheel, wherein both driver's hands grasp the wheel and positions which require the driver's arms to remain in a raised and more or less unnatural and uncomfortable position, considerable strain develops in the driver's hands, arms, shoulders and back particularly, and results in excess of fatigue...

To obviate these disadvantages, I have devised an attachment for steering wheel, which permits a driver to assume a completely comfortable and relaxed driving position, while at the same time, affords a means permitting the driver to at all times retain positive operating control of the steering wheel. [Emphasis added]

Anson, Page 1, Left Column, Lines 6-25.

The steering wheel attachment of Anson is described as follows:

The attachment comprises a hand grip portion 11, which is preferably of bulbular form.... Grip portion 11 normally extends downwardly from the wheel rim and is of suitable length to adapt same to extend to the region of the driver's lap so that it may be grasped by the driver's hand when his hand is resting in a normal comfortable position in his lap. Grip portion 11 is reduced in cross-sectional area at one end to form a neck 12. Neck 12...will have sufficient pliability...to be deflected from its normal pendant position without adversely affecting the measure of control of the steering wheel movements afforded by the positive operating movement of the attachment, while at the same time, neck 12 will retain sufficient rigidity to permit operating movements of hand grip 11 to be positively communicated to the steering wheel rim for effective control of its movements. [Emphasis added]

Anson, Page 1, Right Column, Line 49 – Page 2, Left Column, Line 18.
Appeal Brief, pp. 10-11.

The Examiner has cited Anson at Page 2, Left Column, Lines 62-72, as teaching the deformability element of the second section in the claims on appeal. As the quotation above demonstrates, when the Anson handgrip is in use, it is in the pendant position below the steering wheel and used to steer the vehicle. If, during normal operations, the driver were to grab the steering wheel in an emergency situation, he would release the handgrip and grab the wheel, for example, at the 10 and 2 o'clock positions. In doing so, the pendant-hanging handgrip would not be deformed as set forth in the claims on appeal because it would not be in use at all. Moreover, if it were used, it would not be deformed out of interference but would be held in the pendant position to steer the vehicle and not released. Therefore, there is not an inherent feature of the Anson handgrip to deform out of interference as set forth in the claims.

The Examiner has stated the handgrip of Anson equates to deformation according to claim 20 because it may be moved from the bottom pendant position to the top of the steering wheel. When the handgrip is moved to the top, it is moved there to be placed purposefully out of use all the time. As such, it will not be in a position to be deformed as set forth in the second section of the claims on appeal.³ If the handgrip is moved to the top of the steering wheel, as suggested by the Examiner, it would be awkward and dangerous to use for driving because the driver's hands would be disposed through the steering wheel. In this position, it also would not provide any of the benefits recited in

³ Anson, Page 2, Left Column, Lines 68-72.

Anson to relieve fatigue in the arms and hands of the driver when the handgrip is used with the driver's hands in his/her lap. In order to move the handgrip, it would be understood that the vehicle would have to be stopped, the handgrip detached and repositioned at the top, and reattached, which clearly is not deformation according to the claims on appeal.

Like the handgrip of Van Arsdel, the Examiner has equated the act of detaching the Attachment (handgrip) of Arson and moving it to a new location as equivalent to the functional limitations of the claims on appeal. However, it is plain that there the Attachment (handgrip) of Anson does not inherently possess the functional limitations of the claims as set forth with respect to the second section. Noting this, Anson is missing at least the deforming element of the claims on appeal and, as such, it does not support a *prima facie* basis of anticipation.

3. Laubach Does Not Anticipate Claims 14, 18, and 19/18

In the Appeal Brief, Appellant demonstrated that the invention of claims 14, 18, and 19/10 are distinguishable from Laubach at least because of the functional limitations of the second section of the claimed system.

Laubach states the following with regard to the knobs attached to the steering wheel:

By particularly considering the Figures 2 and 3, it will be seen that these knobs 2 are secured to the rim of the wheel 1 by means of securing screws 4, these screws being threaded as indicated at 5 longitudinally through the knob 2, and extending for quite a distance through the entire length of the knobs, thereby efficiently bracing the same. The inner ends of the knobs 2 are concave as indicated at 6, so as to conform to the contour of the outer periphery of the wheel 1...

Each knob 2 is provided with a plurality of finger sockets 9 upon the upper face thereof, and an enlarged head portion 10 at the outer end thereof, for the purpose of facilitating the gripping of the knob and preventing the accidentally slipping of the hand of the operator from the knob 2. [Emphasis added]

Laubach, Page 1, Lines 43–71.

The description of the knobs and a review of the Figures make plain that the knobs are not deformable and they are not disposed at an angle with respect to the plane across the face of the steering wheel. The knobs are rigidly connected to the steering wheel by screws 5. Any movement of them requires removing the screws, drilling the

wheel at a new location, and reattaching the knobs at the new location. At this new location, the knobs will be in a plane parallel to the plane across the face of the steering wheel.

The knobs do not deform out of interference with the operation of the steering wheel, as does the second section of the claims on appeal. In fact, once the Laubach knobs are secured by screws 5 as shown and described, they are fixed and not movable during normal operations. If they are not unscrewed, the only movement would be to apply a destructive force to the knobs, thereby breaking them. There is nothing in Laubach that would lead a person of ordinary skill in the art would find an inherent feature of knob of Laubach to met the functional limitations of at least the second section of the claimed invention. Therefore, Laubach does not support a prima facie basis of anticipation because it is missing at least one element of the claims on appeal relating to deformation of the knobs out of interference with the operation of the steering wheel in the normal operation of the knobs.

C. *Ex parte Masham* is Misapplied

The Examiner only cited to *Ex parte Masham* in discussing Laubach in the Examiner's Answer. However, in the related appeal, the Examiner stated the following in more detail with respect to *Masham*:

In addition, a claim containing a “*recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus*” if the prior art teaches all of the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. Inter. Cited in MPEP 2114, *supra*. [Emphasis added]

Related Examiner's Answer, p. 3.

Given the relationship of the claims of the present application on appeal and related application on appeal (U.S. Patent Application Ser. No. 10/720,821), Appellant believes it is appropriate to address *Masham* as if it was cited in the same manner in the present application on appeal as it was in the related application on appeal.

The facts of *Masham* were that the claimed and prior art device were the same except that the apparatus of the claimed invention was fully submerged for mixing the developer material while the prior art apparatus was only partially submerged. This is not the issue in the application in this appeal.

The claims on appeal are distinguished from Van Arsdel, Anson, and Laubach based on the apparatus of each of these references not having a structure capable of performing the functional limitations of the appealed claims. Moreover, the way that the Examiner has contorted the references to try to show that each performs the functional limitations of the appealed claims is not supported by the respective specifications and improper. The Examiner in each case states that the grip-rest, handgrip, or knob may be removed from a fixed location on the steering wheel rim, moved to another location along the rim, and then reattached to the rim. Appellant submits that such actions do not anticipate the appealed claims with regard to the second section deforming. Thus, the Examiner's reliance on *Masham* is inappropriate given the inapposite facts of the present case. As such, *Masham* has been misapplied and should not be given weight in the present Appeal.

IV. Van Arsdel and Anson Do Not Anticipate

Although Appellant has addressed the applicability of *In re Schreiber* for supporting the anticipation rejections based on Van Arsdel, Anson, or Laubach, the Examiner has stated separate bases for rejecting claims 14-17, 19/17, 24/14 and 27 for anticipation under 35 U.S.C. § 102 based on Van Arsdel and Anson. Each of these bases will now be addressed.

A. Van Arsdel Does Not Anticipate

In rejecting claims 14-17, 19/17, 24/14 and 27 for anticipation based on Van Arsdel, the Examiner stated the following in the Examiner's Answer:

At the outset, Appellant's arguments are not based on limitations appearing in the claims [Citation omitted] In fact, Appellant's claim 14 recites "*a rigid, semi-rigid or flexible, or non-deformable second section that connects to, and extends from the first section outward at an angle to a plane across the front face of the steering wheel.*" It is clear from claim 14 that it requires a second section of the handgrip, *not* the handgrip *per se*, [to] extend from the first section outward at an angle to a plane across the front face to the steering wheel. Therefore, Appellant's contention that the grip rest of Van Arsdel is in a plane parallel with the one across the face of the steering wheel on page 8 of the brief is immaterial to the patentability of the claim. The issue is not whether Arsdel's grip rest is disposed at an angle relative to the plane across the face of the steering wheel. Rather, the issue is whether Arsdel teaches the second section that connects to and

extends from the first section outward at an angle relative to the plane across the face the steering wheel.

Examiner's Answer, p 5.

The quotation immediately above makes plain that the Examiner does not understand the disposition of the element 2 of the Van Arsdel grip-rest or the claims of the appeal. First, the invention of the claims on appeal is not a handgrip. Second, the Examiner in Attachment 1 to the March 30, 2006 Office Action⁴ attempts to show that element 2 is disposed at an angle α to a plane across the face of the steering wheel shown in Figure 3 of Van Arsdel. This is imply not the case.

The disposition of element 2 of the handgrip is shown in Figure 6 in the same plane as a plane across the face of the steering wheel. (Van Arsdel, Page 2, lines 15-27) Another view of the same handgrip is in Figure 3. As such, Figure 3 does not, as the Examiner contends, show element 2 extending for the steering wheel at an angle α to a plane across the face of the steering wheel. Therefore, the redrawing of Figure 3 as the Examiner has done does not support the proposition he is advancing.

The description of the Figures supports the Applicant's contention that redrawing of Figure 3 by the Examiner is error. The description of Figures 2, 3, 4, 5, and 6 makes this clear:

Figure 2 is a like view of the wheel with my invention and with the thumb and fingers of operator in proper driving position.

Figure 3 is a perspective view of the upper side of the wheel and my invention in the operative position with the operator's hand removed.

Figure 4 is a perspective view of the under side of the same wheel shown in Figure 3.

Figure 5 is a fragment of a wheel rim in top plan view with my invention attached.

Figure 6 is a section on the line 6-6 of Figure 5.
Van Arsdel, p. 1, Left column, lines 43-53.

Appellant also submits even if element 2 was disposed as the Examiner contends, it would not anticipate the invention of claims on appeal. When element 2 is fixed on the steering wheel as described in Van Arsdel at page 2, lines 15-27, it is fixed in place and there is no teaching or suggestion in Van Arsdel that it would deform out of interference

⁴ See Attachment A hereto.

with the use of the steering wheel, as claimed in the claims on appeal. Therefore, this is a second basis that supports Van Arsdel does not anticipate the claims on appeal.

The Examiner has attempted in the Examiner's Answer to show that even though the hand grip is fixed to the steering wheel, it is deformable out of interference with the operation of the steering wheel when pressure is placed on it. This is simply not the case. The Examiner stated the following in the Examiner's Answer:

In the case at hand, on page 1, right column, lines 13-28, Arsdel describes: "[t]he grip rest 2 is *concave* longitudinally and about half of the rest extends over and part way across the steering wheel rim 3 in a manner to slope downwardly and inwardly of the rim. The outer edge 4 of the side, and 5 of the rear end of the *concave*, located above the rim, *extends up into a marginal flange* to be contacted by the inside of the ball of the thumb or by the bottom of the hand, depending upon which part of the hand is seated to rest." See also Arsdel's claims 1 and 2. Arsdel's concave upward section 2 extends from the first section 4 outward at an angle α to a plane across the face of the steering wheel as shown in Figs. 3 and 8 of Attachment 1 of the final action. Therefore, Arsdel's concave upward section 2 in Fig. 3 of Arsdel "reads on" Appellant's claimed second section.

In addition, Appellant's contention that "[o]nce the grip rest if Arsdel's hand grip is in place, it is fixed, and does not move" is unsupported by substantial evidence in the record. Indeed, on page 1, right column, line 49 through line 2, left column, page 2, Arsdel expressly describes:

My improved grip-rest may be formed integrally with the rim of the steering wheel as shown in Fig. 8, but I prefer to make it *removable* as an attachment for any make of car and also make it *adjustable* to suit the requirements or fancy of the driver. Emphasis added.

Particularly, Appellant's contention is in direct conflict with Arsdel's description on page 2, left column 2, left column, lines 28-32:

The grip rest *may be shifted* along the length of the rim, or vertically around it by reversing the screw sufficiently to permit *change of the rest to the new position*, where it will be held again by tightening up on the screw. (Emphasis added).

Simply put, Arsdel explicitly teaches that the driver may loosen the screw 14 in Fig. 6 so that it is *deformable* in order that the driver can put extensive pressure on it and it will move for steering the automobile.

The support in the description of Arsdel for the statement that the second section will deform out of interference with the operation of the steering wheel is found on page 2, left column, lines 28-32. By loosening

or reversing the screw 14 sufficiently to permit Arsdel's second section 2 shifting vertically around the rim 3, the second section can be at the new position wherein the second section does not interfere with the operation of the steering wheel to suit the requirements or fancy of the driver.

Examiner's Answer, pp. 6-7.

A review of the Examiner's quotation above, finds that the Examiner equates a loosely connected grip-rest according to Van Arsdel as anticipating the present invention. Appellant submits this is misplaced.

The loosened grip-rest of Van Arsdel is not described as supporting the hands but merely for repositioning. The repositioning would not be deformation of the grip-rest. The deformation of the second section is clearly shown and described in the claims on appeal and this is fully supported by the specification and at Figures 3 and 4. The grip-rest of Van Arsdel only provides support once it is fixed in place by tightening the screw 14.

The underlined portion of the quotation above is the Examiner's contention that is not supported by the specification. There is no disclosure in Van Arsdel that states that the screw is loosened and extensive pressure is then put on the grip-rest and it will move for steering the automobile. The only description that describes putting extensive pressure on the grip-rest for steering the automobile is when the screw is tightened and it is fixed as shown in Figure 6. Van Arsdel, in the pertinent part states:

In making at assembly the band 9 is wrapped around the wheel rim and the free end of the band is laid across the nut and bent past the ears 12 and 13 with one of the holes 11 in register with the hole at the nut, the ears 12 and 13 are then bent toward each other to clamp and hold the assembly. Then the grip rest is placed as shown in Fig. 6, with its bifurcation receiving the nut and adjacent fasteners of the band and rim, and the threaded end of the screw bolt 14 is screwed into the nut 10 until the grip-rest is immovably tightened upon the rim of the wheel.

The grip-rest may be shifted along the length...by reversing the screw sufficiently to permit change of the rest to the new position, where it will be held again by tightening on the screw. [Emphasis Added]
Van Arsdel, p.2, left Column, lines, 15-32.

The clear teaching of Van Arsdel is that the handgrip is "immovably" tightened to the steering wheel. It is not disposed as the Examiner contends. The loosening of the screw of the Van Arsdel hand grip is for moving it to a new location. There is also no

teaching that the Van Arsdel grip-rest is even operable in the intermediate state of the loosened screw for supporting a hand and deforming as set forth in the appealed claims and the Examiner has not presented evidence that it would be operable at this intermediate state.⁵

Noting the foregoing, Appellant has shown that the Examiner's reliance on an unsupported attempted reconstruction and operation of Van Arsdel is improper. Therefore, the Board should reverse the Examiner's rejection based on Van Arsdel and remand it to the Examiner with instructions to withdraw the anticipation rejection based on Van Arsdel.

V. Anson Does Not Anticipate the Appealed Claims

In the Examiner's Answer, the Examiner contends that because the Anson hand grip is made from pliable material it is deformable as set forth in the appealed claims. Appellant submits a review of Anson does not support the Examiner's contentions.

The Examiner's Answer states the following with regard to Anson in an attempt to support the anticipation rejection based on this reference:

In fact, Anson's grip is made of flexible or semi-rigid material, therefore, Anson's grip is deformable or deflectable out of interference with the vehicular operator's ability to operate the steering wheel, i.e., out of the normal position. See page 2, right column, and lines 25-40 quoted below:

In the modification illustrated in Figs. 4 and 6, neck 12 is constructed of a rubber composition having the same desired characteristics of pliability and semi-rigidity described in connection with the form illustrated in Figs. 1 and 2 and described above. The hand grip portion 11, however, may be made of solid material such as metal, and is detachably connected to neck 12. While the modification does not possess the degree of

⁵ Once the grip-rest is fixed in place, it does not deform out of interference. If it did so, it would not be operating according to the description of that invention. The grip-rest of Van Arsdel is designed to place pressure on it and it will not move. It is only intended to move when it is unscrewed. Appellant has not claimed and is not attempting to claim a system is fixed at one location of a steering wheel and it may be moved by removing a screw to loosen it, and then refixing it at a new location by retightening the screw. The appealed claims claim a system that has a second section that extends outward from a first section such that the second section extends outward at an angle to a plane across the front face to the steering wheel. This second section also is deformable such that it will deform out of interference with operation of the steering wheel when deforming pressure is applied as is best shown in Figure 3 of the present application. Appellant submits that Van Arsdel does not teach or suggest these features of the appealed claims and, therefore, does not anticipate such appealed claims.

hand gripping comfort inherent in the principal modification, nevertheless, by virtue of the pliability and semi-rigidity of the neck portion; this type of attachment will also provide the advantages of *ready deflection from the normal position* while affording positive control of the wheel movements. (Emphasis added.)

Examiner's Answer, pp. 7-8.

As best can be understood from the Examiner's comments and citation to the quotation immediately above is that the Examiner is attempting to raise some type of inherency argument to contend Anson anticipates the appealed claims. This is not supported by Anson.

Anson in the first paragraph states the purpose and use of the hand grip:

This invention [of Anson] relates to steering wheel attachments and particularly to an attachment for automobile steering wheels which permits holding and manipulation a steering wheel without actually grasping it with the hands.

Anson, p. 1, Right Column, Lines 1-5.

The Examiner also seeks to equate Anson's use of the term "deflection" as synonymous with "deformable." This is not supported by Anson. Anson's use of the term "deflection" is according to the following:

In practice, it is found that an auxiliary grip attachment constructed of a rubber composition, which has a hand grip portion in the form of a hollow bulb, shaped to fit the hand, is particularly adapted to comfortable and non-fatiguing gripping by the hand of the driver. The hand grip portion is provided with a shank or neck of the same or similar composition material, which is in turn attached to the wheel by a suitable wheel gripping clamp. The neck portion is constructed of a sufficient thickness of the composition stock to provide sufficient rigidity therein to enable effective control of the wheel by suitable operating movements of the hand grip portion, while at the same time, the neck is sufficiently pliable so that it may be deflected from injurious contact with the body of the driver in the event of sudden stops or collisions which would tend to thrust the body of the driver against the attachment.

Anson, p. 1, Right Column, Lines 5-24.

It will also be evident that the pliability of the attachment greatly reduces the danger of injury to the driver from sudden stops or collisions which might tend to impel the body of the driver toward the wheel or attachment.

Anson, p. 2, Right Column, Lines 56-61.

As is shown by the quotations immediately above, “deflection” that is contemplated in the Anson is not “deformation” as set forth in the appealed claims. The deflection of Anson is meant to reduce the risk of injury caused by the hand grip in the lap area not movement from the supporting position as in the claims on appeal. More specifically, this is not deformation of the second section out of interference as claimed in the appealed claims so the driver can grab the wheel as shown in Figures 3 and 4 of the application on appeal.

Moreover, the operable position of the Anson hand grip is in the pendent position so that it will achieve the desired results. To the extent it may be moved so that it is not used, it is placed at a location where it will not be contacted. The Examiner has not disputed this position of Appellant, in fact, the Examiner cites this portion Anson in the Examiner’s Answer. See Examiner’s Answer, p. 8. At this location, Anson explicitly states the hand grip is not in use. As such, there is no teaching that it would be in use and then deformable out of interference as claimed in the appealed claims.

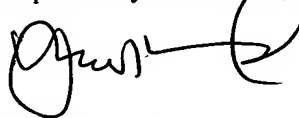
Noting the foregoing, Appellant has shown that the appealed claims are not anticipated by Anson. Therefore, the Board should reverse the Examiner’s rejection based on Anson and remand it to the Examiner with instructions to withdraw the anticipation rejection based on Anson.

VI. Conclusion

Appellant has demonstrated that the dictionary definition provided during prosecution were properly included as part of the record, the Examiner's reliance on case law is misplaced if such case law is reviewed for its facts and holdings, and the Examiner has failed to make out a *prima facie* case for anticipation based on Van Arsdell, Anson, or Laubach. Given this, it is prayed that the Board will reverse the indefiniteness rejection and the anticipation rejections, and remand the application to the Examiner with instructions to allow the appealed claims and pass the application to issue.

No fees are believed due; however, please charge any additional fees due or overpayments to Deposit Account No. 08-0219.

Respectfully submitted,



Wayne M. Kennard
Registration No. 30,271
Attorney for Appellant

Dated: October 31, 2006

Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Tel: 617-526-6183
Fax: 617-526-5000



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,306	12/03/2003	Douglas B. Wilson	114089.120	5202
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WILMER CUTLER PICKERING HALE AND DORR LLP
 60 STATE STREET
 BOSTON, MA 02109

DOCKET DEPT. INTELLECTUAL PROPERTY DEPARTMENT

EXAMINER
 LUONG, VINH

ART UNIT
 3682

PAPER NUMBER

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

WILMER CUTLER PICKERING
 HALE and DORR LLP DOCKETING
 RE: 114089.120
 Action Date: 6-30-06
 Action to be Taken: 6 ADUE
 Docketed By: BMB On: 7-3-06

Office Action Summary	Application No.	Applicant(s)	
	10/727,306	WILSON, DOUGLAS B.	
	Examiner	Art Unit	
	Vinh T. Luong	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/30/06 & 2/8/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-23, 14/20, 25, 26, 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-19, 24/14, 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.


Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Vinh T. Luong
Primary Examiner

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachments 1-3</u> . |

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1. The Amendment filed on January 30, 2006 and the Letter in Response to the Signature filed on February 8, 2006 have been entered.
2. Applicant's election of the species of Figs. 1, 3, and 4 in the reply filed on January 30, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse. MPEP § 818.03(a).
3. Claims 20-23, 24/20, 25, 26, and 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 30, 2006.
4. The drawings are objected to because each part of the invention, such as, the angle in claim 14 should be designated by a referential numeral or character.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The disclosure is objected to because of the following informalities: each part of the invention, such as, the angle in claim 14 should be designated by a referential numeral or character. Appropriate correction is required.

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter, such as, the angle in claim 14. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction is required.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 14-19, 24/14, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “rigid,” “semi-rigid,” “flexible,” or “non-deformable” in claims 14 and 27 is a relative term, which renders the claim indefinite. The term “rigid,” “semi-rigid,” “flexible,” or “non-deformable” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For example, it is unclear what range of Rockwell hardness of the material of the second section is required in order to be considered as being “rigid,” “semi-rigid,” “flexible,” or “non-deformable.” See *Fredman v. Harris-Hub Co., Inc.*, 163 USPQ 397 (DC N Ill 1969)(“Flexibility” and “rigidity” are relative terms, particularly since virtually any thing will flex if enough pressure is applied to it).

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It is unclear whether:

(a) the term that appears at least twice, such as, "a steering wheel" in claim 15/14 refers to the same or different things. See double inclusion in MPEP 2173.05(o); and

(b) a confusing variety of terms, such as, "a peripheral portion of the steering wheel" and "a predetermined peripheral portion of the steering wheel" in claim 17/14 refers to the same or different things. See MPEP 608.01(o).

9. Claims 14-17, 19/17, 24/14, and 27, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Van Arsdel (US Patent No. 2,118,540).

Regarding claim 14, Van Arsdel teaches a fatigue relieving/preventing apparatus associated with a steering wheel 3 for controlling a vehicle, comprising:

a first section 4 (i.e., a horizontal section) that connects to a peripheral portion of the steering wheel 3; and

a rigid, semi-rigid or flexible, or non-deformable second section 2 that connects to, and extends from the first section 4 at the peripheral portion of the steering wheel 3, the second section 2 extends from the first section 4 outward at an angle (see angle α in Figs. 3 and 5 of Attachment 1) to a plane (Att. 1) across a front face of the steering wheel 3, the second section 2 for supporting at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the second section 2 is less than the pressure for deforming the second section 2 out of interference with the vehicular operator's ability to operate the steering wheel 3, and deforming out of interference with the vehicular operator's ability to operate the steering wheel 3 when pressure from the portion of the vehicular operator's body on

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the second section 2 is equal to or greater than the pressure for deforming the second section 2 out of interference with the vehicular operator's ability to operate the steering wheel 3.

Regarding claim 15, the steering wheel 3 includes a steering wheel 3 for controlling at least a nautical vessel, aircraft, or ground transportation vehicle.

Regarding claim 16, the portion of the body supported by the second section includes at least a forearm, wrist, or hand.

Regarding claim 17, the first section 4 extends a length of a predetermined peripheral portion of the steering wheel 3.

Regarding claim 19/17, the first section 4 is deformable. Note that virtually any thing will be deformed if enough pressure is applied to it. See “flexibility” in *Fredman v. Harris-Hub Co., Inc., supra*.

Regarding claim 24/14, each first section 4 is formed integral with the steering wheel 3. It is well settled that the term “integral” is not restricted to a one-piece article. The term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. See *In re Hotte*, 177 USPQ 326 (CCPA); *In re Clark*, 102 USPQ 241 (CCPA); *In re Dike*, 157 USPQ 581 (CCPA); *In re Kohno*, 157 USPQ 275 (CCPA); and *In re Morris*, 43 USPQ2d 1753, 1757 (CAFC 1997).

Regarding claim 27, the first section 4 is flexible, rigid, or semi-rigid, or non-deformable. See “flexibility” in *Fredman v. Harris-Hub Co., Inc., supra*.

10. Claims 14-17, 19/17, 24/14, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Anson (US Patent No. 2,134,020).

Regarding claim 14, Anson teaches a fatigue relieving/preventing apparatus associated with a steering wheel 10 for controlling a vehicle, comprising:

a first section 13 that connects to a peripheral portion of the steering wheel 10; and
a rigid, semi-rigid or flexible, or non-deformable second section 11 that connects to, and extends from the first section 13 at the peripheral portion of the steering wheel 10, the second section 11 extends from the first section 13 outward at an angle (see angle α in Fig. 8 of Attachment 2) to a plane (Att. 2) across a front face of the steering wheel 10, the second section 11 for supporting at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the second section 11 is less than the pressure for deforming the second section 11 out of interference with the vehicular operator's ability to operate the steering wheel 10, and deforming out of interference with the vehicular operator's ability to operate the steering wheel 10 when pressure from the portion of the vehicular operator's body on the second section 11 is equal to or greater than the pressure for deforming the second section 11 out of interference with the vehicular operator's ability to operate the steering wheel 10.

Regarding claim 15, the steering wheel 10 includes a steering wheel 10 for controlling at least a nautical vessel, aircraft, or ground transportation vehicle.

Regarding claim 16, the portion of the body supported by the second section includes at least a forearm, wrist, or hand.

Regarding claim 17, the first section 13 extends a length of a predetermined peripheral portion of the steering wheel 10.

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Regarding claim 19/17, the first section 13 is deformable. Note that virtually any thing will be deformed if enough pressure is applied to it. See "flexible" in *Fredman v. Harris-Hub Co., Inc., supra*.

Regarding claim 24/14, each first section 13 is formed integral with the steering wheel 10. See *In re Hotte; In re Clark; In re Dike; In re Kohno; and In re Morris, supra*.

Regarding claim 27, the first section 13 is flexible, rigid, or semi-rigid, or nondeformable. See "flexible" in *Fredman v. Harris-Hub Co., Inc., supra*.

11. Claims 14, 18, and 19/18, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Laubach (US Patent No. 1,575,848).

Regarding claim 14, Laubach teaches a fatigue relieving/preventing apparatus associated with a steering wheel 1 for controlling a vehicle, comprising:

a first section 7, 8 that connects to a peripheral portion of the steering wheel 1; and
a rigid, semi-rigid or flexible, or non-deformable second section 10 that connects to, and extends from the first section 7, 8 at the peripheral portion of the steering wheel 1, the second section 10 extends from the first section 7, 8 outward at an angle (see angle α in Fig. 2 of Attachment 3) to a plane (Att. 3) across a front face (Att. 3) of the steering wheel 1, the second section 10 for supporting at least a portion of a vehicular operator's body when pressure from the portion of the vehicular operator's body on the second section 10 is less than the pressure for deforming the second section 10 out of interference with the vehicular operator's ability to operate the steering wheel 1, and deforming out of interference with the vehicular operator's ability to operate the steering wheel 1 when pressure from the portion of the vehicular operator's

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body on the second section 10 is equal to or greater than the pressure for deforming the second section 10 out of interference with the vehicular operator's ability to operate the steering wheel 1.

Regarding claim 18, the second section 10 includes at least two second sections (Fig. 1) that each connect to the first section 7, 8 at separate locations.

Regarding claim 19/18, the first section 7, 8 is deformable. Note that virtually any thing will be deformed if enough pressure is applied to it. See "flexible" in *Fredman v. Harris-Hub Co., Inc., supra*.

12. Claims 14-19, 24/14, and 27, as best understood, are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-28 of copending Application No. 10720821 (Appl.'821). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 14-19, 24/14, and 27 of this application and claims 20-28 of Appl.'821 substantially claim common structures such as a first section and a second section connected to the first section. To the extent that claims 14-19, 24/14, and 27 in this application call for the second section being rigid, semi-rigid, or flexible, or *non-deformable*, meanwhile, claims 20-28 in Appl.'821 call for the second section being *deformable*, however, the terms rigid, semi-rigid, flexible, non-deformable, and deformable are relative terms. In fact, when the second section is rigid, semi-rigid, or flexible, it will be deformed if enough pressure is applied to it. Alternatively, when the second section is deformable, it inherently is flexible. See *Fredman v. Harris-Hub Co., Inc., supra*. On the other hand, it is well settled that selection of known material suitable for its intended purpose would have been obvious. *In re Leshin*, 125 USPQ 416 (CCPA 1960) and MPEP 2144.07.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the material of the second section claimed in claims 14-19, 24/14, and 27 of this application such that it is deformable as claimed in claims 20-28 of Appl.'821 in order support a portion of the vehicular operator's body as taught or suggested by common knowledge in the art. *In re Leshin, supra*.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

13. Applicant's arguments filed November 3, 2005 and January 30, 2006 have been fully considered but they are not persuasive.

35 USC 112, 2nd Paragraph

Applicant contended that:

New claims 14-28, like cancelled claims 1-13, include the terms "rigid," "semi-rigid," "flexible," and "non-deformable." Applicant has attached as Attachment A excerpts from the *Ninth New Collegiate Dictionary*. These excerpts demonstrate that each of the terms that the Examiner has contended is indefinite is a very common term that a person of ordinary skill in the art would understand with sufficiency to make and use the present invention. The attached excerpts make plain that a person of ordinary skill in the art would *clearly* understand the scope of the claims when "rigid," "semi-rigid," or "flexible," or "non-deformable," is used. As such, claims 14-28 would be definite in the hands of a person of ordinary skill in the art. (Emphasis added).

The Examiner respectfully submits that Applicant is not confined to normal dictionary meaning. *Fromson v. Advance Offset Plate, Inc.*, 219 USPQ 1137, 1140 (Fed. Cir. 1983). It is well established that dictionary definitions must give way to the meaning imparted by the specification. *In re Johnston*, 77 USPQ2d 1788, 1790 (Fed. Cir. 2006) cited *Phillips v. AWH Industries*, 415 F.3d 1303 [75 USPQ2d 1321](Fed. Cir. 2005)(*en banc*). In the instant case, the

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specification does not impart or define the meaning of the relative terms, such as, rigid, semi-rigid, flexible, and non-deformable. Assuming *arguendo* that a person of ordinary skill in the art would clearly understand the meaning of these terms as defined by dictionary, however, the scope of the claims is still deemed to be indefinite since it is unclear as to, *e.g.*, what materials are covered by the claims. Hence, the rejection under 35 USC 112 is respectfully maintained.

35 USC 102

The rejection based on Lin, Dickinson, or Hamasaka is withdrawn in view of Applicant's amendment in the claims. Applicant's arguments regarding Lin, Dickinson, or Hamasaka are deemed to be moot.

Obviousness Type Double Patenting

Applicant has not filed the terminal disclaimer. Therefore, the rejection based on obviousness type double patenting has not been overcome.

New Prior Art

Applicant argued:

Of the five patents, Laubach, Anson, Van Arsdel, and Berzer, among other things, disclose an element that engages the hand of the driver that is disposed outward or inward from the steering wheel rim in the plane across of the face of the steering wheel. As set forth in claims 14-28, *the second section of the fatigue-relieving apparatus is disposed outward at an angle to the plane across the face of the steering*. This distinguishes claims 14-28 from each of these references. (Emphasis added).

The instant Office action only uses Laubach, Anson, and Van Arsdel. Each of these references teaches the second section disposed outward at an angle to the plane across the face of the steering wheel as seen in Attachments 1-3. Therefore, the elected claims 14-19, 24/14 and 27

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are not allowable. The remaining references Shipley and Berzer are not used to reject Applicant's claims. Applicant's arguments about Shipley and Berzer are moot.

Conclusion

For the reasons set forth above, Applicant's request to allow the claims is respectfully denied.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

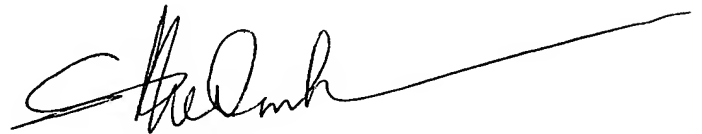
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

March 28, 2006

A handwritten signature in black ink, appearing to read 'Vinh T. Luong', with a long horizontal line extending to the right.

Vinh T. Luong
Primary Examiner

ATTACHMENT # 1

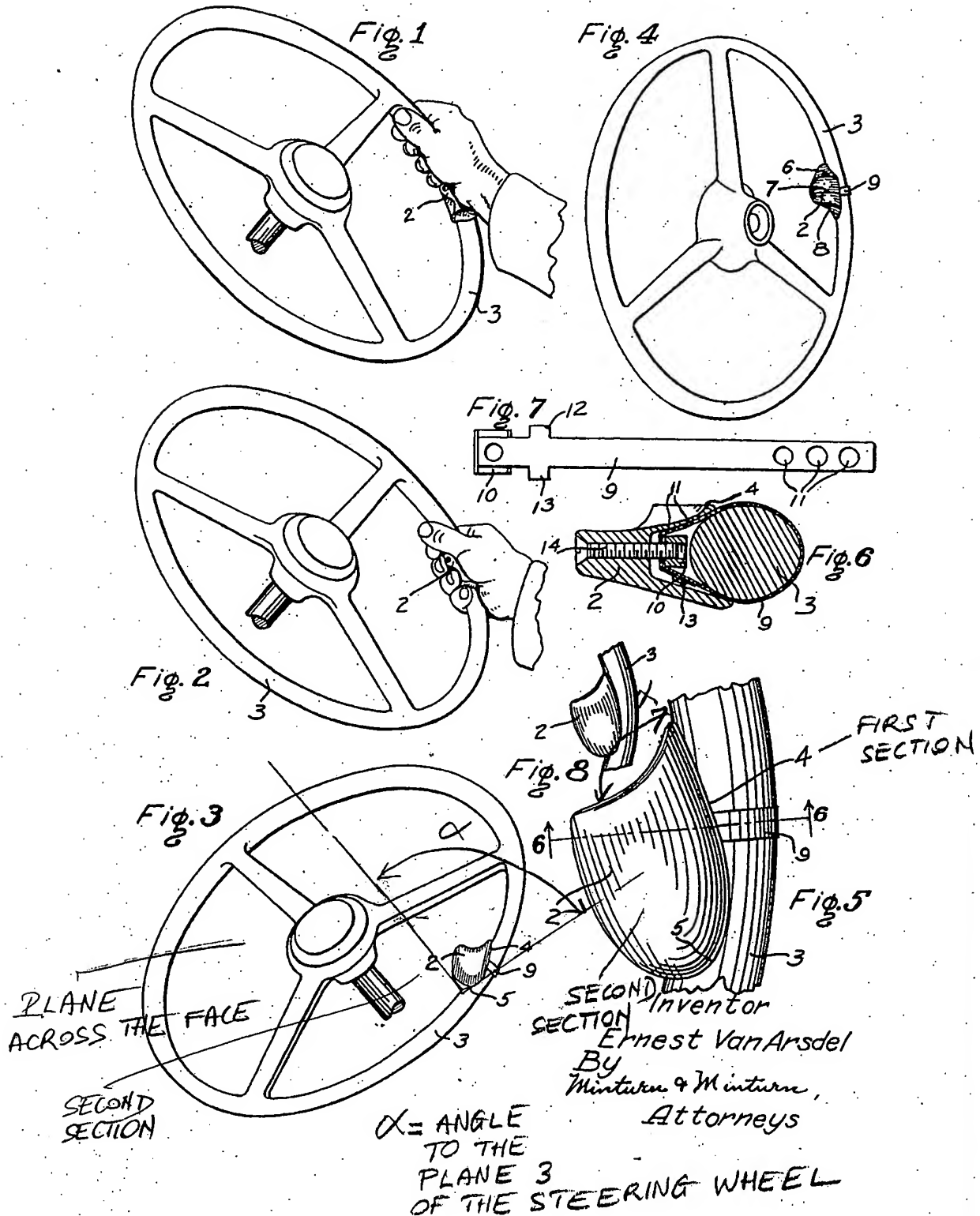
May 24, 1938.

E. VAN ARSDEL

2,118,540

AUTO STEERING WHEEL HANDGRIP

Filed May 10, 1937



ATTACHMENT # 2

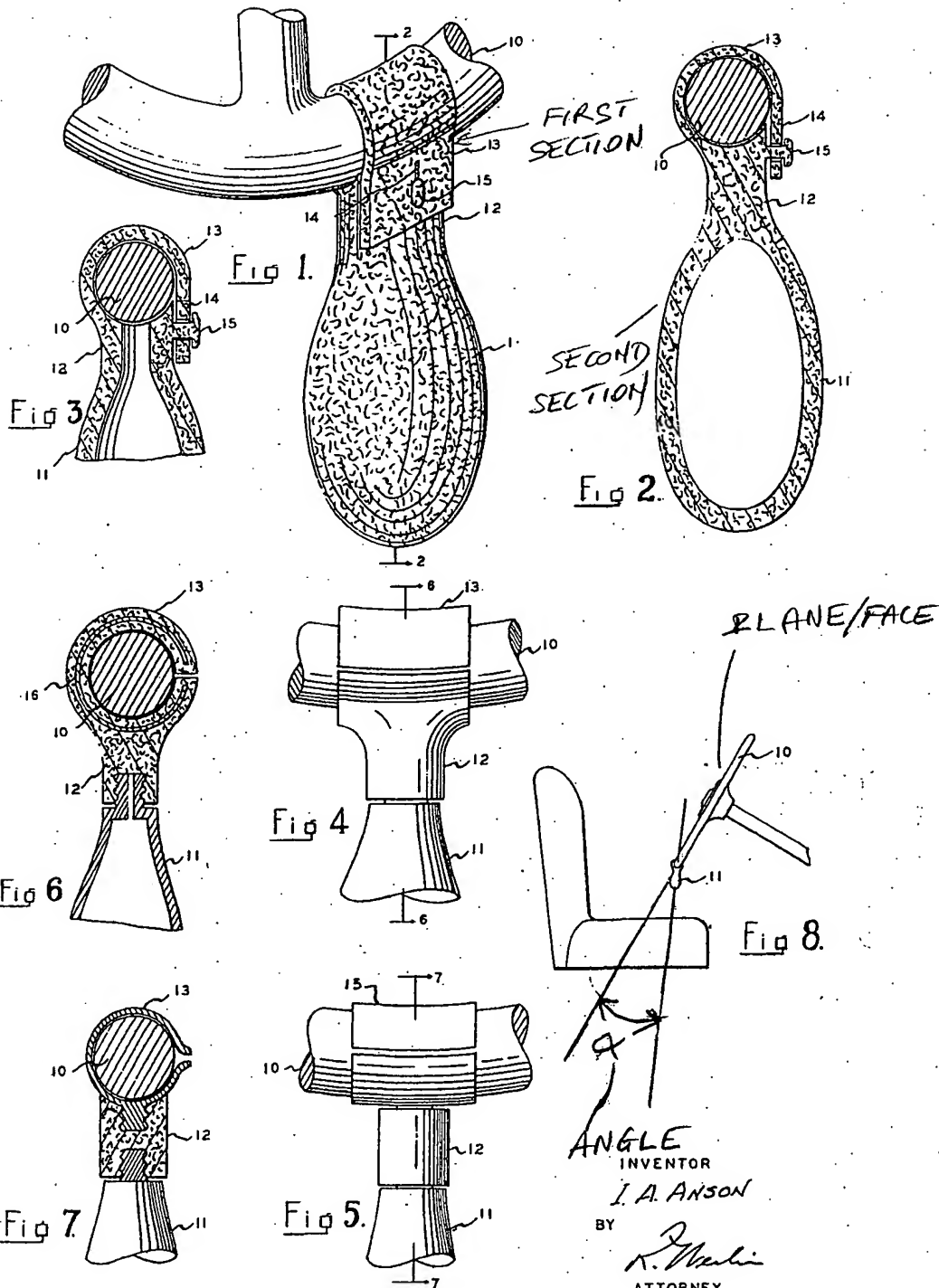
Oct. 25, 1938.

I. A. ANSON

2,134,020

STEERING WHEEL ATTACHMENT

Filed Sept. 30, 1937



ATTACHMENT # 3

March 9, 1926.

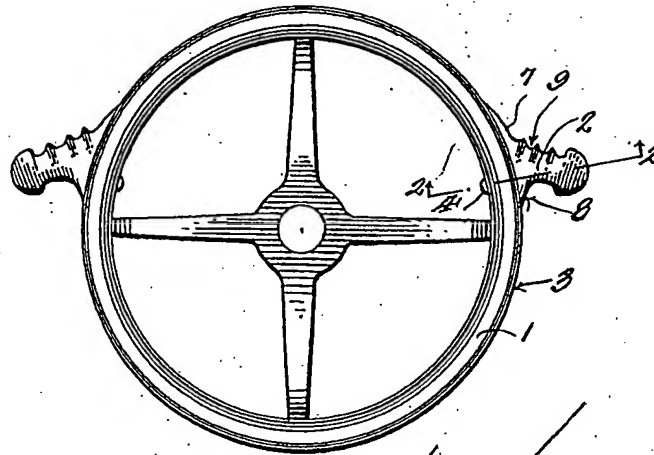
C. E. E. LAUBACH

1,575,848

STEERING WHEEL

Filed July 13, 1925

Fig. 1.



PLANE/FACE

Fig. 2.

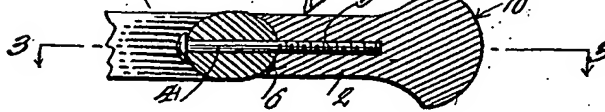
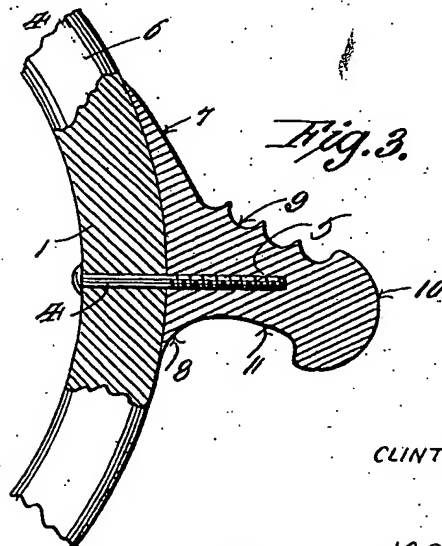


Fig. 3.



WITNESSES

Eugene Spring

Inventor
CLINTONE E. LAUBACH

334

Richard Blewett

Attorney



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,306	12/03/2003	Douglas B. Wilson	114089.120	5202
23483	7590	07/14/2006	EXAMINER	
WILMER CUTLER PICKERING HALE AND DORR LLP 60 STATE STREET BOSTON, MA 02109			LUONG, VINH	
			ART UNIT	PAPER NUMBER
			3682	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



WILMER CUTLER PICKERING
 HALE and DORR LLP DOCKETING
 RE: 114089.120/5202
 Action Date: _____
 Action to be Taken: _____
 Docketed By: BUB On: 7-8-06

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/727,306

Applicant(s)

WILSON, DOUGLAS B.

Examiner

Vinh T. Luong

Art Unit

3682

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

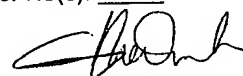
4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 14-19, 24/14, 27.
Claim(s) withdrawn from consideration: 20-23, 14/20, 25, 26, 28.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


Vinh T. Luong
Primary Examiner

Continuation of 11.

See the reasons set forth in the final Office action on March 30, 2006. In addition, regarding Applicant's reliance on extrinsic evidence, e.g., Webster's Dictionary, the Examiner respectfully submits that the specification is the single best guide to the meaning of a claim term. *Phillips v. AWH Corp.*, 75 USPQ2d 1321 (Fed. Cir. 2005)(en banc). Moreover, Applicant's arguments are similar to the arguments presented in copending Application No. 10720821, the Examiner's response in the final rejection on May 9, 2006 of Appl.'821 is incorporated herein by reference.

Continuation of 13. Other:

The replacement drawings filed on June 26, 2006 are accepted by the Examiner.



Vinh T. Luong
Primary Examiner

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/727,306

Examiner

Vinh T. Luong

Applicant(s)

WILSON, DOUGLAS B.

Art Unit

3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 26 June 2006 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
 - ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

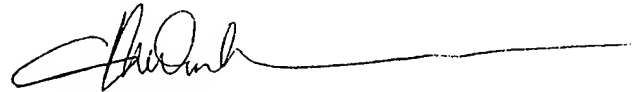
Vinh T. Luong

Primary Examiner

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 4(e) Other: Each claim has not been provided with the proper status identifier. For example, claims 20-23 are withdrawn, however, Applicant identified these claims as "Previously Added."

A handwritten signature in black ink, appearing to read 'Vinh T. Luong', followed by a long horizontal line extending to the right.

Vinh T. Luong
Primary Examiner

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